

AGP-8. PROGRESS PAYMENTS (SMALL BUSINESS)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by JPL, under the following conditions:

(a) Computation of Amounts.

- (1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (A) 90% (or, for small disadvantaged businesses, 95%) of the Contractor's total costs incurred under this Contract whether or not actually paid, plus (B) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Institute under this Contract. Cost of money that would be allowable under FAR 31.205-10 and any corresponding implementing or supplementing provisions in the NFS shall be deemed an incurred cost for progress payment purposes.
- (2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless:
 - (A) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and
 - (B) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).
- (3) The Contractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(A) above:
 - (A) Costs that are not reasonable, allocable to this Contract, and consistent with sound and generally accepted accounting principles and practices.
 - (B) Costs incurred by subcontractors or suppliers.
 - (C) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.
 - (D) Payments made or amounts payable to subcontractors or suppliers, except for:
 - (i) Completed work, including partial deliveries, to which the Contractor has acquired title; and
 - (ii) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.
- (4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this Contract, for which delivery and invoicing by the Contractor and acceptance by JPL are incomplete.
- (5) The total amount of progress payments shall not exceed 90% (or, for small disadvantaged businesses, 95%) of the total Contract amount, or 90% (or, for small disadvantaged businesses, 95%) of any current maximum liability of the Institute specified in the Contract. If any separate contract action specifies a separate limit of the Institute's liability, then the total amount of progress payments for that action shall not exceed 90% (or, for small disadvantaged businesses, 95%) (or 80% if the action is undefinitized) of that separate limit and costs incurred for that action shall be segregated on progress payment requests and invoices.
- (6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Institute on demand.

- (b) Liquidation. Except as provided in the "Termination for Convenience" Article, all progress payments shall be liquidated by deducting from any payment under this Contract, other than advance or progress payments, the unliquidated progress payments, or 90% (or, for small disadvantaged businesses, 95%) of the amount invoiced, whichever is less. The Contractor shall repay to the Institute any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. JPL reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper Contract financing.
- (c) Reduction or Suspension. JPL may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:
- (1) The Contractor failed to comply with any material requirement of this Contract (which includes paragraphs (f) and (g) below.)
 - (2) Performance of this Contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.
 - (3) Inventory allocated to this Contract substantially exceeds reasonable requirements.
 - (4) The Contractor is delinquent in payment of the costs of performing this Contract in the ordinary course of business.
 - (5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this Contract.
 - (6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.
- (d) Title.
- (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this Contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Contract.
 - (2) "Property," as used in this Article, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this Contract under sound and generally accepted accounting principles and practices.
 - (A) Parts, materials, inventories, and work in process;
 - (B) Special tooling and special test equipment to which the Government is to acquire title under any other Article of this Contract;
 - (C) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (2) above; and
 - (D) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to JPL by other Articles of this Contract.
 - (3) Although title to property is in the Government under this Article, other applicable Articles of this Contract (e.g., the "Termination" or "Special Tooling" Articles) shall determine the handling and disposition of the property.
 - (4) The Contractor may sell any scrap resulting from production under this Contract without requesting JPL's approval, but the proceeds shall be credited against the costs of performance.

- (5) To acquire for its own use or dispose of property to which title is vested in the Government under this Article, the Contractor must obtain JPL's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of Contract performance, and (ii) repay to the Institute any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.
- (6) When the Contractor completes all of the obligations under this Contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not:
- (A) Delivered to, and accepted by, JPL under this Contract; or
- (B) Incorporated in supplies delivered to, and accepted by, JPL under this Contract and to which title is vested in the Government under this Article.
- (7) The terms of this Contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this Article.
- (e) Risk of Loss. Before delivery to and acceptance by JPL, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this Article, except to the extent JPL expressly assumes the risk. The Contractor shall repay the Institute an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.
- (f) Control of Costs and Property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this Article.
- (g) Reports and Access to Records. The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Government or JPL for the administration of this Article. Also, the Contractor shall give the Government or JPL reasonable opportunity to examine and verify the Contractor's books, records, and accounts.
- (h) Special Terms Regarding Default. If this Contract is terminated under the "Default" Article, (i) the Contractor shall, on demand, repay to the Institute the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which JPL elects not to require delivery under the "Default" Article. The Institute shall be liable for no payment except as provided by the "Default" Article.
- (i) Reservations of Rights.
- (1) No payment or vesting of title under this Article shall (i) excuse the Contractor from performance of obligations under this Contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the Contract.
- (2) JPL's rights and remedies under this Article (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this Contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this Article or the exercise of any other right, power, or privilege of JPL.
- (j) Progress Payments to Subcontractors. The amounts mentioned in (a)(1)(B) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:
- (1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contract has approved for current payment in the ordinary course of business.
- (2) The subcontract or interdivisional order is expected to involve a minimum of approximately six months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four months.

- (3) The terms of the subcontract or interdivisional order concerning progress payments:
- (A) Are substantially similar to the terms in FAR 52.232-16 and any corresponding implementing or supplementing provisions in the NFS for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;
 - (B) Are at least as favorable to JPL as the terms of this Article;
 - (C) Are not more favorable to the subcontractor or division than the terms of this Article are to the Contractor;
 - (D) Are in conformance with the requirements of FAR paragraph 32.504(e) and any corresponding implementing or supplementing provisions in the NFS; and
 - (E) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to JPL's right to require delivery of the property to JPL if (i) the Contractor defaults or (ii) the subcontractor becomes bankrupt or insolvent.
- (4) The progress payment rate in the subcontract is the customary rate used by NASA, depending on whether the subcontractor is or is not a small business concern.
- (5) The parties agree concerning any proceeds received by the Institute for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by JPL to the Contractor under this Contract.
- (6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Institute obtained through the terms required by this Article to be in any subcontract, as if all such rights had transferred to the Contractor.
- (7) The Contractor shall pay the subcontractor's progress payment request under subdivision (j)(1)(B) above, within a reasonable time after receiving JPL's progress payment covering those amounts.
- (8) To facilitate small business participation in subcontracting under this Contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in FAR Subpart 32.5 and any corresponding implementing or supplementing provisions in the NFS. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.